Authority in other jurisdictions is uniformly against the holding in the principal case. A driver having the right of way at a street crossing is not justified in plunging ahead regardless of consequences nor failing to exercise ordinary care to avoid injury to others. *Glatz* v. *Kroeger Bros. Co.,* 168 Wis. 635. "If we assume the defendant had the right of way the conditions must be such as to justify him in the absolute exercise of the right. In any event, his right on the highway is not exclusive, but at all times relative and still subject to the fundamental common law doctrine: *Sic utere tuo ut alienum non laedas.*" *Paulsen* v. *Klinge,* 92 N. J. L. 99. The right of precedence at a crossing has no application where one not having that right approaches the crossing and has no reasonable grounds for apprehending a collision because of the distance from the crossing of one having such right. *Barnes* v. *Barnett,* 184 Iowa 936. Furthermore, "the rule regarding the right of way does not impose upon the person crossing the street the duty of assuming that the other will continue to cross an intersecting street without slowing down, as required by law." *Whitelaw* v. *McGilliard,* 179 Cal. 349. Perhaps in the principal case the fact was that the plaintiff was guilty of contributory negligence because of a failure to yield the defendant the right of way, but whether or not this was so should have been found as a matter of fact rather than as a matter of law.

PERJURY—ACQUITTAL OF CRIME CHARGED NO BAR TO SUBSEQUENT PROSECUTION FOR PERJURY.—Defendant was convicted of perjury for giving false testimony at a previous trial in which he was acquitted of a charge of receiving stolen property. The conviction of perjury was inconsistent with the prior acquittal. *Held,* acquittal was no bar. *People* v. *Niles* (Ill., 1921), 133 N. E. 252.

The general rule is that acquittal on a criminal charge is no bar to a subsequent prosecution of the defendant for perjury. The cases of *United States* v. *Butler,* 38 Fed. 498, and *Cooper* v. *Commonwealth,* 106 Ky. 909, to the contrary, have been seriously questioned and expressly overruled respectively by *Allen* v. *United States,* 194 Fed. 664, and *Teague* v. *Commonwealth,* 172 Ky. 665. In some cases it has been said that if the conviction of perjury necessarily contradicts the previous acquittal, the latter is a bar. *Chilwood* v. *United States,* 178 Fed. 442; *State* v. *Smith,* 119 Minn. 107. The logic of treating the matter as *res judicata* is somewhat impaired by recalling that the prior acquittal was essentially a failure to find the defendant guilty beyond a reasonable doubt rather than a finding that he was not guilty. Thus, if an acquittal were held conclusive of the fact *a fortiori,* a conviction should have the same effect. Sound policy seems to require that a defendant taking the stand in his own behalf should not be able to perjure himself with utter impunity, nor should his immunity depend upon the convincingness with which he lies. For notes and citations of authorities see 39 L. R. A. (n. s.) 385; L. R. A. 1917 B 743.

PUBLIC UTILITY CORPORATIONS—RIGHT TO DISCONTINUE SERVICE.—The O Company entered into a contract with a village to supply it with gas for ten

years. Its supply of gas failing, the O Company made a contract with the E Company for a supply of gas, the contract being subject to termination upon six months' notice by either party. By means of the gas thus obtained the O Company was enabled for a time to perform its contract with the village, but before the term of the contract had expired the E Company gave notice as required and discontinued its supply of gas to the O Company, when then applied to the Public Utilities Commission for permission to withdraw its gas service and facilities from the village. The E Company was made a party to the proceedings, but was dismissed on the ground that the commission could not compel it to supply gas to the village because there was no contractual obligation between the E Company and the village, though the charter of the E Company expressly authorized it to supply gas to the village in question. The O Company was given permission to withdraw its service and facilities because of its inability to obtain gas. On appeal, the order of the commission was affirmed. *Village of St. Clairsville* v. *Public Utilities Commission* (Ohio, 1921), 132 N. E. 151.

The right of a public utility corporation to discontinue its service seems uncontested, so far as the general public is concerned, when the corporation acts with the consent of the state. *Jeffries* v. *Commonwealth*, 121 Va. 425. The United States Supreme Court has held that, in the absence of statute or express contract a public service corporation has the right to discontinue its entire service when operations are being carried on at a loss and without reasonable prospect of future profit. *Brooks-Scanlon Company* v. *Railroad Commission of Louisiana*, 251 U. S. 396; *Bullock* v. *R. R. Comm. of Florida*, 254 U. S. 513. In the latter case the court said: "No implied contract that they will do so (operate at a loss) can be elicited from the mere fact that they have accepted a charter from the state and have been allowed to exercise the power of eminent domain." Accord, *Lyon & Hoag* v. *Railroad Commission*, 183 Cal. 145; *New York Trust Co.* v. *Buffalo & L. E. Trac. Co.*, 183 N. Y. Supp. 278. To compel operation in such cases would result in the taking of property without due process of law, in violation of the Fourteenth Amendment. *Brooks-Scanlon Company* v. *Railroad Commission of Louisiana, supra.* Naturally, the courts have not frequently passed upon the right of a solvent public utility corporation to discontinue its service entirely. In support of such a right, see 1 WYMAN ON PUBLIC SERVICE CORPORATIONS, §§ 290-313; *Munn* v. *Illinois*, 94 U. S. 113; *San Antonio Street Railway Co.* v. *State of Texas*, 90 Tex. 520; *Gas Co.* v. *City*, 81 Ohio St. 33; *Fellows* v. *Los Angeles*, 151 Cal. 52. For opinions *contra*, see note, L. R. A. 1915 A 549; *Southern Ry. Co.* v. *Hatchett*, 174 Ky. 463. But where a public utility corporation discontinues its service as to part or all of its plant it renders its franchises liable to forfeiture. *State* v. *Pawtuxet Turnpike Corp.*, 8 R. I. 182; *The People* v. *The Albany & Vermont Railroad Co.*, 24 N. Y. 261; *San Antonio Street Railway Co.* v. *State of Texas, supra.* And where the corporation desires to retain its charter the state can compel it to render service even on those parts of its system where the operation results in a financial loss, provided the corporate property as a whole is

earning a profit. *Southern Ry. Co.* v. *Hatchett, supra; State* v. *Postal Telegraph Co.*, 96 Kan. 298; *Brownell* v. *Old Colony Railroad*, 164 Mass. 29; *Colorado, etc., Co.* v. *Railroad Commission*, 54 Colo. 64. But in Ohio, apparently, a corporation under a permissive charter has the right to discontinue any part of its service which it is not under contractual obligation to furnish. *Gas Co.* v. *City, supra.* See also *Selectmen of Amesbury* v. *Citizens' Elec. St. Ry.*, 199 Mass. 394; *Laighton* v. *City of Carthage, Mo.*, 175 Fed. 145. Ordinarily, where the discontinuance of part of the service results in a benefit to the public or is necessary to insure the financial success of the part operated, the state will take no action against the corporation. *Iowa* v. *Old Colony Trust Co.*, 215 Fed. 307. At common law, property devoted to a public use could be withdrawn in any case only after reasonable notice to the public. 1 WYMAN ON PUBLIC SERVICE CORPORATIONS, § 316. Many states now hold that a public utility corporation has no right to discontinue service without first obtaining the consent of the state, acting through its Public Utilities Commission. *People ex rel. Hubbard* v. *Colorado Title & Trust Co.*, 65 Colo. 472; *State* v. *Postal Telegraph Co.*, 96 Kan. 298; *Southern Ry. Co.* v. *Hatchett, supra.* The decisions of the commissions are subject to review by the courts. See cases last cited. It is also important to note that the right to discontinue service does not necessarily include the right to dismantle the plant. See *R. R. Commission of Ark.* v. *Saline River Ry. Co.*, 119 Ark. 239. Regarding the right to discontinue service, see L. R. A. 1915 A 549; 11 A. L. R. 252; 32 HARV. L. REV. 716. In *Northern Illinois Light & T. Co.* v. *Illinois Commerce Comn.* (Ill., Feb. 1922), 134 N. E. 142, a public service corporation was engaged in operating a street railway and also in furnishing light and power to a city. It was held that where an entire street railroad system was earning a reasonable return the company could not discontinue service on certain of its lines, even though those particular lines were not yielding a profit. But the court also held that the profit earned on one branch of the corporate business—*e. g.*, its light and power service—could not be considered in determining the right to discontinue service in regard to another branch of its business—*e. g.*, its street railway service—when the latter was being operated at a loss.

TRUSTS—INSURANCE TO A BENEFICIARY WITHIN PERMITTED CLASS IN TRUST FOR PERSON OUTSIDE CLASS.—Insured took out $5,000 of insurance with the Bureau of War Risk Insurance in favor of his mother. He desired to take out another $5,000 policy in favor of his fiancée, but was informed he could not name her as beneficiary. He thereupon took out the additional insurance in favor of his mother, but wrote a letter to his fiancée stating that his mother would pay over the money from the second policy to her. *Held,* evidence not sufficient to establish the existence of an executed trust. *Semble,* an attempt upon the part of the insured to accomplish by indirection what the statute forbids is illegal and unenforceable. *Caessna* v. *Adams* (N. J., 1921), 115 Atl. 802.

The decisions are conflicting in cases like the above where the insured